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In re Application of

Victor Corvalan

Application No. 10/736,667

Filed: December 17, 2007

Attorney Docket No.

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MAY 09 2008

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed April 4, 2008.

The petition is **granted**.

This application was held abandoned August 17, 2007, after no reply was received to the Notice of Non-Compliant Amendment mailed August 14, 2007, and again on August 21, 2007. The period for reply remained as set forth in the final office action mailed May 16, 2007. Extensions of the time set for reply under 37 CFR 1.136(a) were available. No response was received within the allowable period and the application became abandoned on August 17, 2007. A Notice of Abandonment was mailed March 13, 2008. The instant petition was filed on April 4, 2008. Petitioner maintains that the notice of August 14, 2007, was never received.

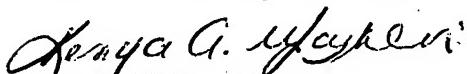
Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as to prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

It is noted that petitioner has not provided a copy of the docket record where the non-received Office action would have been entered had it been received. It is further noted that petitioner is a *pro se* applicant; the burden of proof as to the docket records imposed by Section 711.03(c)(II) cited above is deemed onerous for the *pro se* applicant. Accordingly, Petitioner's statement as to the non-receipt of Office action is, therefore, presumed true. Petitioner is cautioned that Petitioner must inform the Office immediately if, upon further investigation, the representation made to the Office relative to the non-receipt is determined to be factually untrue.

Petitioner has otherwise met the burden of proof as established by Section 711.03(c)(II) of the MPEP.
The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 3600, GAU 3682 for further processing.

Questions concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions